

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

KATHERINE S. DESTEFANO,

Case No. 1:11-cv-436

Plaintiff,

Bowman, M.J.

v.

OHIO DEPARTMENT OF TRANSPORTATION,

Defendant.

ORDER

On April 12, 2012, this Court granted Plaintiff's motion to strike an affidavit filed by a defense witness in support of Defendant's motion for summary judgment. The Court accepted Defendant's representation that its non-disclosure of two witnesses was an "honest mistake." Nevertheless, the Court directed Defendant to pay attorney's fees relating to the motion to strike, pursuant to Rule 37, based upon the "significant harm" to Plaintiff caused by the non-disclosure. (Doc. 47).

At the Court's direction, Plaintiff submitted an affidavit claiming \$4,201.50 in attorney's fees incurred in connection with the motion to strike (Doc. 50). Defendant filed a timely response objecting to the amount of fees, to which Plaintiff responded with a supplemental affidavit. (Docs. 54, 55). Defendant has moved to strike Plaintiff's supplemental affidavit as unauthorized by the Court's order concerning the fee award.

The Court has reviewed Plaintiff's original affidavit, Defendant's response thereto, Plaintiff's supplemental affidavit, and Defendant's motion to strike. While the filing of two affidavits rather than one was not contemplated by the Court's original order, the submission of the second affidavit only provides a more detailed breakdown of how counsel arrived at the submitted amount. Continuing to engage in satellite litigation over this issue serves neither the parties nor this Court. It is enough to say that the Court finds the total amount of fees claimed for the original motion to strike to be in excess of what the Court finds to be an appropriate sanction under Rule 37 for the Defendant's original violation. Accordingly, **IT IS ORDERED:**

1. Defendant shall pay the sum of \$2,100.75 to Plaintiff as a sanction for its prior non-disclosure;
2. Defendant's motion to strike (Doc. 56) is DENIED AS MOOT.

s/ Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge